

STATE OF CALIFORNIA

SPRAY DAVIS, Governor

# **SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION**

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March 15, 2002

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Vice President  
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SUBJECT: Cargill's Redwood City Properties

Dear Bill:

I appreciate the time your colleagues and you took to meet with our staff on February 27<sup>th</sup> as well as the discussions that you have been conducting with us and other federal and state agencies during the past four years on the possible consolidation of Cargill's salt making operations. As you know, the purpose of our February 27 meeting was to provide Cargill with our staff's assessment of how we believe our Commission would apply the McAteer-Petris Act and *San Francisco Bay Plan* policies on salt ponds to Cargill's holdings in Redwood City.

Based on the advice the Commission has received from the California Attorney General's Office, we believe that, pursuant to Section 66610(c) of the McAteer-Petris Act, the Commission has jurisdiction over virtually all of the area Cargill uses in its salt making operations. We recognize that Cargill does not agree with this legal interpretation, particularly as it applies to crystallizers, wash ponds, bittern storage and similar areas. However, our differences of opinion have not prevented BCDC and Cargill from working together to achieve complimentary objectives.

In evaluating any development proposed on Cargill's property at Redwood City, the Commission would rely on the policies of the McAteer-Petris Act and the Bay Plan. With regard to the Act, we believe Section 66602.1 is most relevant. That section states in part:

*...areas diked from the Bay and used as salt ponds...are important to the Bay Area, in that, among other things, such areas provide a wildlife habitat and a large water surface which, together with the surface of the Bay, moderate the climate of the Bay Area and alleviate air pollution;...it is in the public interest to encourage continued maintenance and operation of salt ponds...;...if development is proposed for these areas, dedication or public purchase of these lands should be encouraged in order to preserve water areas. ...if any such areas are authorized to be developed and used for other purposes, the development should provide the maximum public access to the Bay consistent with the proposed project and should retain the maximum amount of water surface area consistent with the proposed project.*

In addition to the above provision, the Bay Plan policies most relevant to our discussion are as follows:

1. *As long as is economically feasible, the salt ponds should be maintained in salt production ... In addition, the integrity of the salt production system should be respected (i.e., public agencies should not take for other projects any pond or portion of a pond that is a vital part of the production system).*
2. *If, despite these provisions, the owner of the salt ponds...desires to withdraw any of the ponds...from their present uses, the public should make every effort to buy these lands, breach the existing dikes, and reopen these areas to the Bay. This type of purchase should*

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*have a high priority for any public funds available, because opening ponds...to the Bay represents man's last substantial opportunity to enlarge the Bay rather than shrink it....*

3. *If public funds do not permit purchase of all the salt ponds...proposed for withdrawal from their present uses, and if some of the ponds...are therefore proposed for development, consideration of the development should be guided by the following criteria.*
  - a. *Just as dedication of streets, parks, etc., is customary in the planned unit development and subdivision laws of many governments, dedication of some of the pond areas as open water can and should be required as part of any development. Highest priority to such dedication should be given to ponds that (1) would, if opened to the Bay, significantly improve water circulation, (2) have especially high wildlife values, or (3) have high potential for water-oriented recreation....*
  - c. *Development of the ponds...should provide for retaining substantial amounts of open water, should provide for substantial public access to the Bay, and should be in accord with the Bay Plan policies for non-priority uses of the shoreline. [Emphasis added.]*

I believe the following correctly summarizes the current situation and describes the context for the application of the McAteer-Petris Act and BCDC's salt pond policies to Cargill's properties

Cargill currently conducts a salt making operation on about 30,800 acres of property in the Bay Area (29,400 acres in the South Bay and 1,400 acres in the North Bay), including approximately 12,000 acres owned by the federal government within the Don Edwards San Francisco Bay National Wildlife Refuge. Engineering advances make it possible for Cargill to consolidate its operations and produce enough product to meet market needs on about 12,000 acres of property. The company, therefore, has offered to sell the remaining 18,800 acres to public agencies, primarily for wetland restoration purposes.

Discussions between Cargill and the government about a sale of the property have been underway for nearly four years. Recently, Senator Diane Feinstein became actively involved in the negotiations. In an effort to reach an acceptable purchase price, about 1,400 acres of Cargill's property in Redwood City have been removed from the purchase negotiations.

You indicated that Cargill wishes to include in its analysis of any transaction involving its properties an assessment of the scale and type of development Cargill can reasonably assume could be approved on the company's approximately 1,400-acre plant site at Redwood City. To gain a better understanding of the jurisdictional positions, policies and restrictions that would impact development of Cargill's Redwood City property, we understand that your staff and you have consulted with a variety of federal, state and local organizations, including BCDC.

As we explained, the most reasonable application of the Bay Plan policies would be to apply Policies #1 and #2 to all of Cargill's holdings and Policy #3 to the property remaining in Cargill ownership after any sale of salt ponds to the public. You indicated that you did not agree with that analysis as it artificially limits the scope of development at Redwood City. You pointed out that Cargill could withdraw additional acres from the proposed sale, add it to the 1,400-acre Redwood City property, and thereby increase the development potential. For a number of reasons, we do not think that this approach would be consistent with the Bay Plan policies or serve the public interest.

Applying the policies in the manner we believe appropriate, Cargill's proposed consolidation of salt-making operations and the fact that Cargill has been willing to engage in extended negotiations to sell the excess 17,600 acres to the public seem to be fully in accord with the Bay Plan Salt Pond Policies #1 and #2. Therefore, the scale of development BCDC could approve on Cargill's 1,400-acre Redwood City property seems to rest on how the Commission would interpret the words "some" and "substantial" in Policy #3.

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As used in this context, *Webster's Ninth New Collegiate Dictionary* defines "some" as an "indeterminate quantity, portion, or number as distinguished from the rest" and "substantial" to mean "considerable in quantity" or "significantly large." Relying on these common definitions of the words, the requirement to retain "substantial" amounts of open water is far more rigorous than the need to dedicate "some" of the pond areas as open water. Moreover, we believe these policies should be read together and applied harmoniously rather than seen as separate and distinct requirements that must be met cumulatively. Therefore, if a development scheme includes provision to retain "substantial" amounts of open water, restore the water areas to tidal circulation and dedicate the open area to the public, our staff believes these actions would meet the relevant requirements of Bay Plan Salt Pond Policies #3a and #3c, as well as satisfy the requirement of Section 66602.1 of the Act requiring "the maximum amount of water surface area consistent with the proposed project" to be retained.

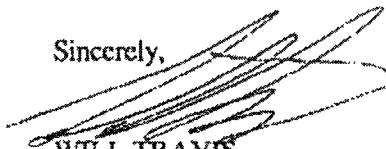
Although the application of the term "substantial" in this case is clearly somewhat subjective on which reasonable people can disagree, our staff believes that when applied to Cargill's 1,400-acre Redwood City property, the requirement must be evaluated in the context of Cargill's overall consolidation plan which has created the potential for public acquisition and restoration to wetlands of about 17,400 acres of salt ponds. The Commission's decision should also recognize that Cargill may be in the position of being able to increase the development potential of the company's Redwood City holdings by including salt ponds that are now part of public acquisition negotiations in the area being considered for development.

Taking all of these factors into account, our staff believes that, on balance, if about half of the 1,400-acre property is retained in open water, dedicated to the public and restored to tidal circulation, our staff would recommend that the Commission find that this action would meet the test of being "substantial" and, thus, in accord with the salt pond policies of the McAteer-Petris Act and the *San Francisco Bay Plan*.

I must hasten to add that the precise level of development permissible cannot be determined at this stage. As part of any development, the need for roads, trails, parks, open space and public access to the Bay will reduce the amount of development that can be accommodated on the site. Other state and federal agencies, administering a variety of different laws, policies and regulations, will have their own views on the amount, nature and location of development on the property. Detailed environmental studies may identify biological or physical constraints that would have to be accommodated in any development proposal. The City of Redwood City will have to approve any development project before our Commission can consider a permit application for the property. And, when a permit application is submitted to BCDC for development on the property, it will be our Commission, not our staff, which will determine how the Bay Plan policies should be applied.

I hope this information is helpful as Cargill conducts its analysis of Senator Feinstein's historic and visionary proposal for improving San Francisco Bay.

Sincerely,



WILL TRAVIS  
Executive Director

cc: Commissioners and Alternates  
The Honorable Diane Feinstein